

Criminal Justice Reform in New Jersey

In 2017, a major change took place in New Jersey's criminal justice system. First, cash bail is no longer the primary requirement for a defendant to be released pretrial. Second, a constitutional amendment approved by voters now allows judges to order people who might be a flight risk or a danger to the community to be held in jail until trial.

A change of this magnitude always brings questions - and misconceptions.

Let's look at the facts.



New Jersey Judiciary



**Chief Justice
Stuart Rabner**

"The existing bail system is not fair to poor defendants who, because they cannot post bail, are cut off from families and may lose their jobs. In terms of the charges against them, studies have shown that they face tougher plea offers and pressure to plead guilty because of the amount of time they have already spent in jail, and they receive longer sentences as compared to similarly situated defendants who were able to make bail."



STUART RABNER
CHIEF JUSTICE

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

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New Jersey Judiciary



Myth v. Fact

For more information about criminal justice reform in New Jersey, go to www.njcourts.gov and search for "criminal justice reform."

Myth v. Fact

Myth – Dangerous criminals are being released to the community without supervision until trial.

Fact – Before criminal justice reform, a judge was obligated to set bail in most cases. A dangerous defendant with money could post bail and be released. Now, prosecutors for the first time have the opportunity to convince a judge that a defendant poses a significant risk to the community and should be held in jail with no chance for pretrial release.

Defendants considered a moderate risk are released with conditions and then monitored by a newly formed unit of the courts, the Pretrial Services Unit. Low-risk defendants charged with non-violent crimes are typically released on their own recognizance.

Myth – Judges have been replaced by a computer algorithm that determines if defendants should be released pretrial.

Fact – Only a judge can determine if a defendant should be released pretrial and what the conditions of the release should be. Judges also can decide to detain a defendant until trial, but only if the prosecutor requests detention. In reaching their decision, judges are guided in part by the recommendation of a proven risk assessment tool called the Public Safety Assessment (PSA).

The PSA looks at bias-free factors – such as the defendant's age, the current charge, pending charges, prior convictions, and the number of times a defendant missed a court date in the past - to measure the risk that a defendant might commit a crime or flee while on release.

In other words, judges must still make the decision, they just have a new source of scientific data to assist them when making that decision.



Myth – The Public Safety Assessment is a “secret” algorithm that cannot be seen by the police or the public.

Fact – The results of the PSA are not only available to police officers, prosecutors and public defenders, they are read aloud in court. The nine factors included in the PSA are listed on the Judiciary's website, www.njcourts.gov, and at arnoldfoundation.org for the public to see.

Myth – Judges are no longer allowed to consider a defendant's juvenile record, the current charges or pending charges when making a decision about pretrial release.

Fact – As mentioned previously, the PSA considers both the current charges against a defendant as well as any pending charges. Judges also can consider a number of factors not in the PSA, including a defendant's juvenile history, the weight of the evidence against the defendant and the risk to the safety of the community.

Myth – The old system of cash bail was safer.

Fact – No system of pretrial release can guarantee that a defendant will obey the law or show up for court while out on release. The cash bail system certainly offered no

such guarantee. Dangerous criminals who had access to enough money were released on bail pretrial – and with no monitoring. The reality under the old system was that there were defendants who committed new crimes while they were out on bail.

The new system measures risk. The PSA looks at factors such as the defendant's current charges as well as previous convictions and missed a court dates in the past. Judges also can consider a defendant's juvenile record and a number of additional factors not included in the PSA when making pretrial release decisions.

It is important to remember that defendants are presumed innocent until proven guilty. Before criminal justice reform, about 13 percent of people in county jails in New Jersey remained in jail before their trial—sometimes for years—because they were unable to post bail amounts as low as \$2,500. They were in jail not because they were dangerous, but because they were poor.

Criminal justice reform removes money from the equation and replaces it with an honest and direct conversation about the threat a criminal defendant poses to the community. It is a fairer, and ultimately safer, system of pretrial justice.